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December 8, 2010

**VIA CM/ECF & FEDERAL EXPRESS**

Hon. Madeline Cox Arleo, U.S.M.J.  
United States District Court  
District of New Jersey  
M.L. King, Jr. Federal Building & U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

**Re: BanxCorp v. Bankrate, Inc.**  
**Civil Action No. 07-3398 (SDW) (MCA)**

Dear Judge Arleo:

This firm represents defendant Bankrate, Inc. ("Bankrate") in the referenced matter. On November 22, 2010 we wrote to Your Honor requesting leave to file a motion for protective order and to quash certain subpoenas and notices of deposition. Annexed to our request was our Proposed Motion. *See* Def.'s Nov. 22 Letter at Ex. 3 (Doc. No. 156).

After filing that submission with the Court, we became aware from a third party that plaintiff BanxCorp had served an amended subpoena on it; Bankrate had not been served with a copy of that amended subpoena. After contacting counsel for BanxCorp to remind him of his obligation under Fed. R. Civ. P. 45(b) to provide us with notice of third-party subpoenas in advance of service, we learned on November 29, 2010 that BanxCorp had served twenty-one amended subpoenas on ten occasions without giving us notice.

I am writing in order to supplement our proposed motion with objections to the amended subpoenas, as well as additional subpoenas that have been served by BanxCorp since our November 22 submission to the Court.

Many of BanxCorp's amended subpoenas still contain harassing requests that are intended to harm Bankrate's business relationships. In particular, the subpoenas to the New York Times Co., CNBC, AOL, Inc., and Move, Inc. contain the same inflammatory language in the document requests<sup>1</sup> discussed in the Proposed Motion at 4-5. (Ex. A.) The subpoenas to Dow Jones &

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<sup>1</sup> The improper requests to the New York Times, CNBC, and AOL, are found at Request Nos. 2, 3, 6, 7. Bankrate did not previously object to the subpoena to Move, Inc.; however, it now

Hon. Madeline Cox Arleo, U.S.M.J.  
Page 2

December 8, 2010

Co., Fox News Network, CNN, and MSNBC also contain improper requests<sup>2</sup> discussed in the Proposed Motion at 4. (Ex. B.)

Bankrate also seeks protection from new or amended subpoenas issued to Bankrate's customers (or their advertising agencies) which still contain all of the improper requests identified in the Proposed Motion at 4-5. Specifically, Bankrate seeks protection from the subpoenas issued to: Sapientnitro USA, Inc., Bartle Bogle Hegarty LLC, Ascencia, Virtual Bank, Bank of the Internet, USA, Everbank Financial Corp., Citigroup, Inc., HSBC North America Holdings, Inc., Ally Financial, Inc., E-Loan, Inc., J. Walter Thompson, Aurora Bank FSB, and Starcom Media Vest Group, and Ciju T.R. Nair.<sup>3</sup> (Ex. C.)

Bankrate continues to seek protection, from the amended subpoenas issued to the Federal Trade Commission and the U.S. Department of Justice (Ex. D.). As discussed in the Proposed Motion (at 5-6), they are specifically aimed at obtaining discovery for another lawsuit, *BanxCorp v. Apax Partners L.P.* (no. 10-4769), where discovery has not commenced.

Last, Bankrate requests that the Court enter an order directing plaintiff to comply with Rule 45(b) and provide notice to Bankrate of subpoenas prior to serving them.

Thank you for Your Honor's time and attention to this matter.

Respectfully submitted,



R. Scott Thompson

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cc: Nelson E. Canter, Esq. (via CM/ECF)  
Michael J. Hahn, Esq.

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objects because the amended subpoena contains new harassing and inflammatory language found at Request Nos. 4, 5, 7, 8.

<sup>2</sup> The two objectionable requests to these entities are found at Request Nos. 1 and 2.

<sup>3</sup> The improper document requests are found at Request Nos. 1, 2, 4 and 5. The improper requests to E-Loan are found under Section B at the same request numbers. The subpoenas issued to Ascencia and Bank of the Internet remain facially invalid under Rule 45(a)(2)(C) because they require production of documents at a location outside of the district of the issuing court.

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